UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--x
DANIEL McGUIRE,

Plaintiffs,

-against-

VILLAGE OF TARRYTOWN; DREW FIXELL, individually and in his capacity as Mayor of the Village of Tarrytown; STEVE McCABE, individually and in his capacity as Village Administrator of the Village of Tarrytown; SCOTT BROWN, individually and in his capacity as Chief of Police of the Village of Tarrytown; SERGEANT FRANK J. GIAMPICCOLO, individually and in his capacity as police officer of the Village of Tarrytown; SERGEANT JOHN C. GARDNER, , individually and in his capacity as police officer of the Village of Tarrytown; SERGEANT JOHN BARBELET, individually and in his capacity as police officer of the Village of Tarrytown; SERGEANT KEVIN BARBELET, individually and in his capacity as police officer of the Village of Tarrytown; POLICE OFFICER CHRISTOPHER COLE, individually and in his capacity as police officer of the Village of Tarrytown; POLICE OFFICER GREGORY M. BUDNAR, individually and in his capacity as police officer of the Village of Tarrytown; POLICE OFFICER DENNIS C. SMITH, individually and in his capacity as police officer of the Village of Tarrytown; POLICE OFFICER BRIAN F. MACOM, individually and in his capacity as police officer of the Village of Tarrytown; BARRY WARHIT, individually and in his capacity as justice of the Village of Tarrytown; SHAMEKA TAYLOR, individually and in her capacity as an Assistant District Attorney in the County of Westchester, DISTRICT ATTORNEY'S OFFICE, County of Westchester; COUNTY OF WESTCHESTER,

Defendants.
--x

ANSWER

Docket No.
08 Civ. 2049 (SCR)

Defendants VILLAGE OF TARRYTOWN; DREW FIXELL, STEVE McCABE, SCOTT BROWN, SERGEANT FRANK J. GIAMPICCOLO, SERGEANT JOHN C. GARDNER, SERGEANT JOHN BARBELET, SERGEANT KEVIN BARBELET, POLICE OFFICER CHRISTOPHER COLE, POLICE OFFICER GREGORY M. BUDNAR, POLICE OFFICER DENNIS C. SMITH, POLICE OFFICER BRIAN F. MACOM, and BARRY WARHIT, by their attorneys, MIRANDA SOKOLOFF SAMBURSKY SLONE VERVENIOTIS, LLP, as and for their answer to plaintiff's complaint, set forth as follows:

PARTIES TO ACTION

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ "1" of the complaint.

2. Admit the allegations contained in ¶ "2" of the complaint insofar as plaintiff alleges that he names these individuals as defendants in the case.

STATEMENT OF CLAIM - CAUSES OF ACTION

FIRST CAUSE OF ACTION

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ "1" of the complaint.

2. Deny the allegations contained in ¶ "2" of the complaint.

3. Deny the allegations contained in ¶ "3" of the complaint.

4. Deny the allegations contained in ¶ "4" of the complaint.

5. Deny the allegations contained in ¶ "5" of the complaint.

6. Deny the allegations contained in ¶ "6" of the complaint.

7. Deny the allegations contained in ¶ "7" of the complaint.

8. Admit the allegations contained in ¶ "8" of the complaint.

9. Deny the allegations contained in ¶ "9" of the complaint.

10. Deny the allegations contained in ¶ "10" of the complaint.

11. As and for a response to the allegations contained in ¶ "11" of the complaint, defendants repeat and reallege their responses to the allegations contained in ¶¶ "One" through "Ten" of the complaint, as though they were fully set forth herein.

12. Deny the allegations contained in ¶ "12" of the complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ "13" of the complaint.

14. Deny the allegations contained in ¶ "14" of the complaint.

15. Deny the allegations contained in ¶ "15" of the complaint.

16. Deny the allegations contained in ¶ "16" of the complaint.

17. Deny the allegations contained in ¶ "17" of the complaint.

18. Deny the allegations contained in ¶ "18" of the complaint.

19. Deny the allegations contained in ¶ "19" of the complaint.

THIRD CAUSE OF ACTION

20. As and for a response to the allegations contained in ¶ "20" of the complaint, defendants repeat and reallege their responses to the allegations contained in ¶¶ "ONE" through "NINETEEN" of the complaint, as though they were fully set forth herein.

21. Deny the allegations contained in ¶ "21" of the complaint.

22. Deny the allegations contained in ¶ "22" of the complaint.

23. Deny the allegations contained in ¶ "23" of the complaint, and refer all questions of law to the Court for adjudication.

24. Deny the allegations contained in ¶ “24” of the complaint, and refer all questions of law to the Court for adjudication.

25. Deny the allegations contained in ¶ “25” of the complaint, and refer all questions of law to the Court for adjudication.

FOURTH CAUSE OF ACTION

26. As and for a response to the allegations contained in ¶ “26” of the complaint, defendants repeat and reallege their responses to the allegations contained in ¶¶ “ONE” through “TWENTY-FIVE” of the complaint, as though they were fully set forth herein.

27. Deny the allegations contained in ¶ “27” of the complaint, and refer all questions of law to the Court for adjudication.

28. Deny the allegations contained in ¶ “28” of the complaint, and refer all questions of law to the Court for adjudication.

FIFTH CAUSE OF ACTION

29. As and for a response to the allegations contained in ¶ “29” of the complaint, defendants repeat and reallege their responses to the allegations contained in ¶¶ “ONE” through “TWENTY-EIGHT” of the complaint, as though they were fully set forth herein.

30. Deny the allegations contained in ¶ “30” of the complaint, and refer all questions of law to the Court for adjudication.

31. Deny the allegations contained in ¶ “31” of the complaint.

SIXTH CAUSE OF ACTION

32. As and for a response to the allegations contained in ¶ “32” of the complaint, defendants repeat and reallege their responses to the allegations contained in ¶¶ “ONE” through “THIRTY-ONE” of the complaint, as though they were fully set forth herein.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ "33" of the complaint.

34. Deny the allegations contained in ¶ "34" of the complaint, and refer all questions of law to the Court for adjudication.

SEVENTH CAUSE OF ACTION

35. As and for a response to the allegations contained in ¶ "35" of the complaint, defendants repeat and reallege their responses to the allegations contained in ¶¶ "ONE" through "THIRTY-FOUR" of the complaint, as though they were fully set forth herein.

36. Deny the allegations contained in ¶ "36" of the complaint.

37. Deny the allegations contained in ¶ "37" of the complaint, and refer all questions of law to the Court for adjudication.

38. Deny the allegations contained in ¶ "38" of the complaint, and refer all questions of law to the Court for adjudication.

39. Deny the allegations contained in ¶ "39" of the complaint.

FIRST AFFIRMATIVE DEFENSE

40. Plaintiff's complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

41. Plaintiff's claim is barred, in whole or in part, by the statute of limitations.

THIRD AFFIRMATIVE DEFENSE

42. The individual defendants are protected by the doctrine of qualified immunity.

FOURTH AFFIRMATIVE DEFENSE

43. Defendant Barry Warhit is protected by the doctrine of absolute judicial immunity.

FIFTH AFFIRMATIVE DEFENSE

44. Defendant Drew Fixell is protected by absolute legislative immunity.

SIXTH AFFIRMATIVE DEFENSE

45. Plaintiff failed to file a timely notice of claim.

SEVENTH AFFIRMATIVE DEFENSE

46. Plaintiff has failed to serve one or more defendants properly.

EIGHTH AFFIRMATIVE DEFENSE

47. Plaintiff has not properly alleged – and cannot prove – that he was deprived of any rights pursuant to a policy, practice, custom, or procedure of the Village of Tarrytown.

NINTH AFFIRMATIVE DEFENSE

48. Defendants had probable cause to arrest plaintiff and to prefer criminal charges against him.

TENTH AFFIRMATIVE DEFENSE

49. Plaintiff's Second Amendment and Fourth Amendment claims are utterly frivolous.

ELEVENTH AFFIRMATIVE DEFENSE

50. The intracorporate conspiracy doctrine bars plaintiff's claim that the police defendants engaged in a conspiracy in violation of 42 U.S.C. § 1985.

TWELFTH AFFIRMATIVE DEFENSE

51. Because plaintiff cannot assert a viable conspiracy claim under 42 U.S.C. § 1985, he may not validly assert a claim under 42 U.S.C. § 1986.

THIRTEENTH AFFIRMATIVE DEFENSE

52. Plaintiff has frivolously, and in violation of Rule 11 of the Fed. R. Civ. Pro., named as defendants one or more individuals who had nothing to do with his arrest and/or prosecution.

Dated: Mineola, New York
April 9, 2008

MIRANDA SOKOLOFF SAMBURSKY SLONE VERVENIOTIS, LLP
Attorneys for Defendants VILLAGE OF TARRYTOWN; DREW FIXELL, STEVE McCABE, SCOTT BROWN, SERGEANT FRANK J. GIAMPICCOLO, SERGEANT JOHN C. GARDNER, SERGEANT JOHN BARBELET, SERGEANT KEVIN BARBELET, POLICE OFFICER CHRISTOPHER COLE, POLICE OFFICER GREGORY M. BUDNAR, POLICE OFFICER DENNIS C. SMITH, POLICE OFFICER BRIAN F. MACOM, and BARRY WARHIT

By: ______________________
BRIAN S. SOKOLOFF (bss-7147)
240 Mineola Boulevard
The Esposito Building
Mineola, New York 11501
(516) 741-7676
Our File No. 08-125

TO: CHARLES O. LEDERMAN
Attorney for Plaintiff
15 Avondale Road
White Plains, New York 10605

TO: OFFICE OF THE WESTCHESTER COUNTY ATTORNEY
Attorneys for Defendants COUNTY OF WESTCHESTER and SHAMEKA TAYLOR
148 Martine Avenue, 6th Floor
White Plains, New York 10601

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) s.s.:
COUNTY OF NASSAU)

MERLISA ANDREWS, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in Jamaica, New York.

That on April 9, 2008, deponent served the within **ANSWER** upon:

CHARLES O. LEDERMAN
Attorneys for Plaintiff
15 Avondale Road
White Plains, NY 10605

OFFICE OF THE WESTCHESTER COUNTY ATTORNEY
Attorneys for Defendants COUNTY OF WESTCHESTER and
SHAMEKA TAYLOR
148 Martine Avenue, 6th Floor
White Plains, NY 10601

the addresses designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Merlisa Andrews
MERLISA ANDREWS

Sworn to before me this 9th day
Of April, 2008.

B.S.
NOTARY PUBLIC

BRIAN S. SOKOLOFF
Notary Public, State of New York
No. 02SO4914710
Qualified in Queens County
Commission Expires November 23, 2009